

	Application No.	Applicant(s)
Notice of Allowability	10/648,946 Examiner	SANTI ET AL. Art Unit
	Amelia A. Owens	1625
The MAILING DATE of this communication appeal claims being allowable, PROSECUTION ON THE MERITS IS herewith (or previously mailed), a Notice of Allowance (PTOL-85) NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIOF the Office or upon petition by the applicant. See 37 CFR 1.313	(OR REMAINS) CLOSED in or other appropriate common GHTS. This application is	n this application. If not included unication will be mailed in due course. THIS
1. 🔀 This communication is responsive to <u>Interview of 3/2/2005</u>		
2. ⊠ The allowed claim(s) is/are <u>1-14</u> .		
3. The drawings filed on are accepted by the Examine	r.	
 4. ☐ Acknowledgment is made of a claim for foreign priority ur a) ☐ All b) ☐ Some* c) ☐ None of the: 1. ☐ Certified copies of the priority documents have 		or (f).
2. ☐ Certified copies of the priority documents have		on No
3. ☐ Copies of the certified copies of the priority do	• •	
International Bureau (PCT Rule 17.2(a)).	oamente nave been receive	a in and national stage application from the
* Certified copies not received:		
Applicant has THREE MONTHS FROM THE "MAILING DATE" noted below. Failure to timely comply will result in ABANDONN THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.		e a reply complying with the requirements
5. A SUBSTITUTE OATH OR DECLARATION must be subm INFORMAL PATENT APPLICATION (PTO-152) which give		
6. CORRECTED DRAWINGS (as "replacement sheets") mus	st be submitted.	
(a) ☐ including changes required by the Notice of Draftspers	son's Patent Drawing Review	w (PTO-948) attached
1) 🗌 hereto or 2) 🔲 to Paper No./Mail Date		
(b) including changes required by the attached Examiner's Paper No./Mail Date	s Amendment / Comment o	r in the Office action of
Identifying indicia such as the application number (see 37 CFR 1 each sheet. Replacement sheet(s) should be labeled as such in t		
 DEPOSIT OF and/or INFORMATION about the depo attached Examiner's comment regarding REQUIREMENT 		
Attachment(s) 1. ⊠ Notice of References Cited (PTO-892)	5. ☐ Notice of In	oformal Patent Application (PTO-152)
 Notice of Neterences Cited (F10-092) Dotice of Draftperson's Patent Drawing Review (PTO-948) 		ummary (PTO-413),
•	Paper No.	/Mail Date
3. Information Disclosure Statements (PTO-1449 or PTO/SB/0 Paper No./Mail Date	08), 7. ☐ Examiner's	Amendment/Comment
4. ☐ Examiner's Comment Regarding Requirement for Deposit	8. 🗌 Examiner's	Statement of Reasons for Allowance
of Biological Material	9. 🗌 Other	

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Yuan Chao on March 2, 2005.

Claims 1-20 are pending. No drawings were filed with the application. Foreign priority was not claimed.

Applicant's election without traverse of Group I, claims 1-13 in the reply filed on July 26, 2004 is acknowledged.

The restriction has been modified to include the method of use (claim14) with the elected compound.

Claim15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected subject matter, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 26, 2004.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The application has been amended as follows:

This application is in condition for allowance except for the presence of claims 15-20 to subject matter non-elected without traverse. *Accordingly, claims 15-20 have been cancelled.*Claim 13 line 1 replace 'comprising' with –consisting of a therapeutically effective amount—

Claim 14 line 1 after 'motility' insert ---, wherein the disorder is gastroparesis or gastroesophageal reflux disease,-----

The changes were made for the following reasons: Claim 13 is self conflicting because the claims are drawn to pharmaceutical compositions without a dosage limitation. Please note that a pharmaceutical composition by definition cannot be either ineffective or toxic.

The transitional term 'comprising', which is synonymous with 'including', 'containing', or 'characterized by', is inclusive or open-ended and does not exclude additional unrecited elements or method steps. Moleculon Research Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) ('comprising' leaves 'the claim open for the inclusion of unspecified ingredients even in major amounts'). See MPEP 211.03.

For claim 14, the instant method of treating a disorder of gastric motility is considered to be reach through claims. Please note that the scope of such claim encompassed any and all future development in the field of gastric motility which finds no descriptive nor enabling support from the specification.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The prior art of record does not teach or fairly suggest the claimed compounds or their use.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amelia A. Owens whose telephone number is 571-272-0690. The examiner can normally be reached on Monday - Friday from 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amelia A. Owens Primary Examiner Art Unit 1625